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EXTRAORDINARY

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 26th August 1953

S.R.O. 1652.—Whereas the election of Chowdhary Balu Ram, as a member of the Legislative Assembly of the State of Punjab, from the Balachaur constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Chowdhary Kartar Singh S/o Chowdhary Ram Kishan of Village Kharar Achhrowal, Tehsil Garhshankar, District Hoshiarpur;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE ELECTION TRIBUNAL, JULLUNDUR

ELECTION PETITION No. 182 of 1952

Chowdhary Kartar Singh son of Ch. Ram Kishan of village Kharar Achhrowal, Tehsil Garhshankar, District Hoshiarpur, at present Chairman District Board, Hoshiarpur.—Petitioner.

Versus

1. Ch. Balu Ram son of Nihala Ram, V & P.O. Raitewal, Tehsil Garhshankar, District Hoshiarpur.
2. S. Arjan Singh son of S. Chanda Singh, village Kharaudi, P.O. Hakumatpur, Tehsil Garhshankar, District Hoshiarpur.
3. S. Charan Singh son of Gopi, Jat, village Simbal Majara, Tehsil Garhshankar, District Hoshiarpur.
4. S. Kartar Singh son of S. Mohan Singh, V & P.O. Simbli, Tehsil Garhshankar, District Hoshiarpur.
5. Sant Bakhtawar Singh son of Chanda Singh, village Mehndipur P.O. Balachaur, District Hoshiarpur.
6. Shri Paras Ram son of Tulsi Ram village & P.O. Balachaur, Tehsil Garhshankar, District Hoshiarpur,
7. Shri Jehantab Singh son of Shri Mehtab Singh, village Garle District Hoshiarpur.—Respondents.

Election petition concerning the election of a member to the Legislative Assembly, Punjab, from Balachaur Constituency, District Hoshiarpur, held in January 1952, as a result of which Ch. Balu Ram respondent No. 1, was declared elected.

PRAYER: That the election of respondent No. 1 is void and also election is wholly void.

CORAM

Shamsher Bahadur Esquire, Bar-at-Law, *Chairman*.
 Ch. Chhaju Ram, B.A. (Hons) LL.B., P.C.S., }
 S. Mohindra Singh Pannun, M.A.L.L.M., D.C.P. } *Members*.

JUDGMENT

(*PER SHAMSHIER BAHADUR Bar-at-Law, Chairman*).

The election of Ch. Balu Ram to the Punjab State Assembly from Balachaur Constituency has been challenged by Ch. Kartar Singh, a defeated candidate. Although there were eight duly nominated candidates from this constituency, only four of them actually contested the election. The state of voting was as follows:—

Ch. Balu Ram respondent No. 1 (Congress)—22786.
 Ch. Kartar Singh petitioner (independant)—11108.
 S. Arjan Singh respondent No. 2.—1491.
 S. Charan Singh respondent No. 3 (Communist)—5401.

The first ground of attack is the improper acceptance of the nomination paper of S. Charan Singh respondent No. 3 whose name does not appear on the electoral rolls of the constituency. The prevalence of undue influence on an extensive scale amongst the voters in the jurisdiction of Balachaur Police Station provides the second challenge to the election of Ch. Balu Ram. In elucidation it has been stated that the petitioner having aligned himself with S. Kapur Singh at one time Deputy Commissioner of Hoshiarpur who has since been dismissed after an enquiry by the Chief Justice of the Punjab High Court, the whole executive machinery from the Governor downwards became hostile to his interests. The petitioner made a special allegation against S. Puran Singh Station House Officer of Balachaur Police Station, as the instrument of the undue influence which was exercised on the voters mainly through the encouragement received by him from the Inspector General of Police with whom the petitioner was not on good terms. The culminating point of this undue influence was reached according to the petitioner's case when in the midst of his election campaign he was put under arrest towards the end of December, 1951, on a charge of cheating under Section 420 I.P.C. an offence which even according to the prosecution was committed as far back as 1948.

Against the first respondent Ch. Balu Ram it was urged that a systematic appeal was made by him on a communal basis for voting amongst his Gujjar brotherhood coupled with a threat of excommunication if they failed to comply with his wishes. A general allegation which has not been pressed was also made that the Congress symbol of two bullocks with a yoke carried with it an appeal to the voters on religious grounds, cow being a symbol of reverence amongst the Hindus. The first respondent was further accused of having procured the assistance of two Government Officers, S. Puran Singh Station House Officer Balachaur, and Ch. Dev Raj of Malewal, Agricultural Assistant, for furtherance of his election prospects.

The last substantial ground of attack was the publication of a poster under the caption "Dhol ka pol khul gaya" at the instance of the third respondent S. Charan Singh which contained false allegations regarding the personal character and conduct of the petitioner. It was stated *inter alia* in this poster that Doctor Gopi Chand Bhargwa, the "Guru Ghantal" of the petitioner had been drawing emoluments of more than Rs. 5000/- p.m. and the petitioner had been responsible for the introduction of the Indian Forests Act, increase in the tuition fee of students, imposition of professional taxes, levy of water tax in the Bit ilaqqa, and for misappropriation by selling bricks and timber belonging to the Government. The petitioner was also blamed in this poster for being the architect of the Hindi-Punjabi controversy in the State.

A few other allegations contained in the petition may also be noted in passing. Objections were taken with regard to three items in the election expenses filed by the first respondent. There was an allegation also of defective construction of ballot boxes and the ineffective seals which were affixed thereto.

The first respondent alone contested the petition and challenged the correctness of the assertions which form the subject matter of the petitioner's attack. In the first instance a preliminary issue was framed to determine the question whether the particulars contained in the schedule annexed to the petition were in substantial compliance with law and this point was decided in favour of the petitioner.

The trial of the petition then proceeded on merits, and the following issues were framed on 10th January, 1953:—

- (1) Whether the result of the election has been materially affected by the improper acceptance of nomination papers of respondent No. 3 S. Charan Singh?
- (2) Whether the election has not been a free one for the reasons given in para No. 7(b) of the petition?
- (3) Whether the election of respondent No. 1 is void for the reasons given in para No. 8 of the petition?
- (4) Whether the election of respondent No. 1 was wholly void for the reasons given in para No. 9 of the petition?
- (5) To what relief, if any, is the petitioner entitled to?

Issue No. 1.—As far as this issue is concerned, the facts at any rate are not in dispute. It has been conceded that the nomination paper (P.W. 1/4) filed by the third respondent S. Charan Singh, who described himself as an ex-Army Captain therein, suffers from a fatal infirmity inasmuch as he adopted the name of another Charan Singh who is shown as a voter in the electoral roll at serial No. 21917. Although in the nomination paper the third respondent described himself as son of Lachhman Singh in conformity with the parentage of Charan Singh, who is shown as voter No. 21917 on the electoral roll, this respondent as P.W. 6 admitted that his father's name is S. Gopal Singh and not Lachhman Singh. Some of the particulars about the address of the candidate mentioned in the nomination paper P.W. 1/4 do not tally with those against the name of S. Charan Singh at serial No. 21917 of the electoral roll. The returning Officer Mr. Yogeshwar Sawhney took the requisite precautions to ensure that the particulars on the nomination paper of the candidate tallied substantially with those mentioned in the electoral roll. So Charan Singh P.W. 6 deposed that he genuinely thought that his vote was the same as mentioned in electoral roll at serial No. 21917 and he filed his nomination paper as such though under a misapprehension. It is a most serious lapse on the part of S. Charan Singh and stern action ought to be taken of this delinquency.

The question remains whether the improper acceptance of this nomination paper has materially affected the result of the election. Charan Singh was adopted a candidate by the Communist party and polled as many as 5,401 votes. S. Ajit Singh, the counsel for the petitioner urged at the outset that the improper acceptance of nomination paper *per se* should be deemed sufficient to affect materially the result of the election, and the Tribunal need not concern itself with any further inquiry. This argument though it runs counter to the statutory rule embodied in clause (c) of Section 100 of the Representation of the People Act that election could be declared void only "if the result of the election has been materially affected by the improper acceptance or rejection of any nomination", has been advanced on the basis that an improper rejection of a nomination paper has been generally held to lead to an irresistible inference that the result has been materially affected. We see no reason to accede to the learned counsel's ensuing argument that an improper acceptance should be treated on the same footing as a rejection of a nomination paper. The line of demarcation between the two type of cases is clear and distinguishable and there is no justification for us to depart from the generally accepted proposition that improper acceptance of a nomination paper cannot *per se* raise a presumption that the result of the election has been materially affected.

The election case of Agra District Non-Mohammadan Rural Constituency, *Pearey Lal Versus Munshi Amba Prasad* (Jagat Narain's Report of Election Case, Volume 4, page 4, has been cited in support of this contention by the learned counsel. Each authority must be deemed to have been decided on its particular facts, and we cannot look at the observations made in a judgment which are isolated from their context. In the Agra case the Tribunal was faced with the situation that the nomination paper of the returned candidate had been improperly accepted and that of another person had been improperly rejected. That was a clear case for setting aside the whole election and taking into account the *ratio decidendi* of this authority we do not feel inclined to attach any importance to the observation of the Tribunal made at page 18 of the reported case: "Improper acceptance or refusal of a nomination paper by the Returning Officer in our view is so grave an irregularity that this presumption would require the strongest and most conclusive proof for its rebuttal and it lies heavily on the Respondent to rebut the presumption so raised".

In our view it is imperative for the Tribunal to examine from the evidence which has been adduced the question of material effect when the nomination paper of a candidate has been improperly accepted and we accordingly proceed to do so.

The petitioner's case is that the third respondent S. Charan Singh whose papers were improperly accepted being a fellow Jat, the votes of the Jat community and the dependent Harijans were unnecessarily split up between them, and this had an adverse influence on the petitioner's election prospects. It has further been contended by the petitioner that a state of despondency prevailed amongst the Jat voters when they found that two persons of their brotherhood were fighting amongst each other, and this mood was reflected on the Harijan voters as well who were dependent on the Jat community. Realizing that the third respondent polled only 5,491 votes, which if they had gone in favour of the petitioner would not have materially altered the election scale, it has been further contended that a large number of 'fluid' votes were cast in favour of the first respondent when they saw that the petitioner had no chance at all of success.

In order to examine the petitioner's contention it would be relevant to look at the following composition of the electorate community-wise:—

Gujjars	..	15,500.
Harijans	..	13,000.
Jats	..	13,000.
Others	..	19,000.

As far as the Harijan votes are concerned, there are as many as three vers given by the petitioner's witnesses. Faqiria P.W. 25 of Balachaur, the Secretary of the Scheduled Castes Federation and a worker of the petitioner deposed that the scheduled castes as a body supported the petitioner's election on the directive of their leader Dr. Ambedkar. Battan Chand P.W. 42 similarly stated that the members of the Harijan community voted for the petitioner on the mandate of Dr. Ambedkar. Sant Bakhtawar Singh P.W. 20, the President of the Akali Dal of Hoshiarpur District who professed to have an intimate knowledge of the election trends gave his opinion that the Gujjars voted solidly for Ch. Balu Ram, while the Jat votes were split up between the petitioner and the third respondent. As regards the Harijans, Sant Bakhtawar Singh stated that they did not vote for the petitioner, believing as they did that the Jat candidate had no prospect of success, the Jat votes being split up between the two Jat candidates. The petitioner Ch. Kartar Singh, had a totally different impression about the Harijan votes. In his evidence he stated that the Harijan vote was split up between Charan Singh respondent No. 3 and himself.

Taking the petitioner's case at its best, all that can be said is that the Harijan votes polled in favour of Charan Singh would have gone to the petitioner, if the latter had not joined the election contest. This would not have in any way materially affected the result of the election. As for the Jat votes, it is well to point out that besides Charan Singh and the petitioner there was a third Jat in the field, and he was Arjan Singh respondent, who polled 1,491 votes. The petitioner having maintained that the election was conducted on sectarian basis, it may be assumed that all the Jat votes were distributed between the petitioner, Charan Singh, and Arjan Singh.

The respondent produced a large number of witnesses who have deposed that voting was done on party lines and not on communal basis. Whether the voting was on sectarian basis or otherwise, it is quite clear to us that the petitioner has not been able to make out any case at all for the avoidance of the election on the ground, of its being materially affected by improper acceptance of nomination paper. We have not been able to understand at all the argument of the petitioner that the 19,000 'fluid' votes were polled in favour of the first respondent because there was a contest between the two Jat candidates. Rajputs and Khatris have been classed as 'fluid' voters and it passes our comprehension how persons of these two communities could have suffered any embarrassment on the ground that there was a split amongst the Jat voters. Far less is there any reason for us to hold that these votes would have been polled substantially in favour of the petitioner if Charan Singh was out of the election picture. The election figures speak for themselves and they provide an eloquent and decisive answer to the surmises and conjectures on which alone the case has been built up on the petitioner's behalf. The first respondent secured more than double the votes obtained by the petitioner, and four times the number polled by Charan Singh respondent. Indeed if the votes of all the three opposing Jat candidates are added together, Ch. Balu Ram would still have been the returned candidate. What possible basis is there for us to hold in face of these figures that the improper acceptance of Charan Singh's nomination paper would have materially affected the result of the election? In our view the answer must be in the negative, and we decide accordingly.

Issue No. 2.—This issue covers the allegations which have been made in the three clauses of paragraph 7 (b) of the petition, as also in the Schedules A, B, and C annexed thereto. The kernel of the petitioner's grievance is that extensive undue influence was exercised by highest Government officers to imperil his election prospects. The main cause of this movement against the petitioner on his own showing was the animosity of the highly placed Government officers towards him. The petitioner ventilated the idea at some stage that Chief Secretary Mr. Sachdev being actuated by communal considerations should be removed from that position. Ch. Kartar Singh claims to have succeeded in getting the Chief Secretary's orders of transfer as Commissioner of a Division. A further cause of estrangement between the petitioner and the high Government officers was provided by the alignment of the petitioner with the cause of S. Kapur Singh, I.C.S., at one time Deputy Commissioner of Hoshiarpur against whom an enquiry was conducted by Hon'ble the Chief Justice of the Punjab High Court. Ch. Kartar Singh appeared as a defence witness in that enquiry. Ch. Kartar Singh stated that his relations with the Inspector General of Police Sardar Sant Parkash Singh had been strained and he attributed the police activities against him during the election days to have been inspired by this high officer.

Apart from his own assertion there is nothing to support the allegation that the Chief Secretary and the Inspector General of Police were unfavourably disposed towards the petitioner much less is there any material to enable any Court to come to a conclusion that these officers did anything to impair the election prospects of the petitioner. It is true that some kind of representations were made by the petitioner to the Governor during the election days, but no inference of any animosity can be deduced therefrom. There is no evidence of any direct or indirect influence or pressure of any kind being brought by Mr. Sachdev or Sardar Sant Parkash Singh on the local officers and it is to be deplored that the petitioner should have dragged these gentlemen into this controversy when he had no material to support his allegations.

We now come to deal with the influence which is attributed to S. Puran Singh, Station House Officer of Balachaur Police Station. S. Puran Singh was posted at Balachaur in the month of February, 1950. As a result of the complaints made by Ch. Kartar Singh and Giani Kartar Singh, the then Chief Minister Dr. Gopi Chand Bhargava got him transferred from Balachaur to Kangra sometime in the month of June, 1951. The Governor's regime was introduced in Punjab on 21st June, 1951, and S. Puran Singh was recalled from Kangra to Balachaur on 11th August, 1951. The transfer was made according to Dr. Gopi Chand Bhargava P.W. 59 because Puran Singh was said to have been indulging in party faction. The retransfer of S. Puran Singh to Balachaur was not taken well by the petitioner who addressed a letter to His Excellency the Governor of the Punjab on 24th September, 1951, making a bitter complaint against the Inspector General of Police, who according to petitioner's allegations directed that S. Puran Singh who had been transferred to Kangra for political reasons should be recalled to Balachaur. No action having been taken on this letter, a reminder was sent by Ch. Kartar Singh (P.W. 61/1) on 26th October, 1951, to which his earlier letter of 24th September 1951 (P.W. 61/2), was attached. When the election campaign was at its full swing, polling in the Constituency having commenced from 13th January 1952, Ch. Kartar Singh was suddenly arrested at Balachaur Rest House on 24th December, 1951, by S. Puran Singh. The arrest was made on a charge under Section 420 of the Indian Penal Code and proceedings had been hanging fire in this case since 1949. According to the petitioner his sudden arrest was made on the incitement of the highest officers of the State deliberately with a view to humiliate him in the eyes of the electors for the sole object of ruining his election prospects.

We must frankly confess that the arrest of Ch. Kartar Singh at that juncture presents a very distasteful feature of this election. It is true that the petitioner was released on bail immediately after his arrest, but it is well to remember that the charge on which the petitioner was arrested related to the offence of cheating said to have been committed in 1948, and the statement of the petitioner had been recorded in this case as far back as 1949. We were informed that this case is still pending before a Magistrate in Dharamsala and no decision has been made thereon. We resolutely decline to countenance the suggestion which has been advanced by the counsel for the petitioner that the arrest was the outcome of a deep and sinister conspiracy engineered by the highest functionaries of the State. S. Puran Singh who actually arrested the petitioner stated that he did so under the orders of the Inspector of the C.I.A. Staff. It is impossible to trace the responsibility for this arrest further than the Inspector, and we would only like to say in this connection that the arrest though it may have been made under

normal routine was ill-timed. It was not for any grave offence that the petitioner was taken under a token arrest and the maintenance of law and order would not have been put in any serious jeopardy if it had been deferred for a few weeks till the elections had been concluded. We do not wish to be understood to say that a candidate enjoys immunity from arrest during election days for this would mean a complete license for him to do what he likes against the law of the land. All we wish to point out is that the arrest of Ch. Kartar Singh at that inopportune moment in the heart of the Constituency was apt to give a rude shock to the concept of free and fair election. This thoughtless action of the Sub-Inspector in making the arrest must be regarded as an isolated act because in truth there is no recorded material on which to feed the speculation that it was inspired by the Inspector General of Police or indeed any other high Officer of the State.

As is to be expected the petitioner has fully exploited the situation and evidence has been led to show that the news of the arrest was circulated amongst the electors with the utmost speed and its announcement was made from loud speakers installed in the jeep of the first respondent. Many witnesses have come forward to state that they saw Puran Singh holding a conference with the first respondent immediately after the arrest and the news was at once taken up and spread like wild fire in the neighbouring villages. The oral evidence adduced by the petitioner to show that the news of his arrest had an adverse influence on the voters and that of the respondent's witnesses that they never heard about the arrest of the petitioner during the election campaign is scarcely of any assistance to the Tribunal. It is the circumstances of the arrest which have to be taken into account. It has been explained by the Assistant Sub-Inspector S. Harbans Singh (P.W. 17) that though the case was registered on 3rd April, 1949, the investigation was not handed over to the witness till 26th July of that year. The latest *zimni* of the case was recorded in the month of May, 1952. The delay in the course of investigation has been explained by S. Harbans Singh; it took seven months for the Accountant General to send the cheques which formed the basis of the prosecution. The file then remained for about one year with the Government as it was required in the inquiry against S. Kapur Singh. The file was returned by the Government on 22nd December, 1951 and the arrest of the petitioner was made on 24th December. From the incomplete challan which was submitted in Court it appears that many persons besides the petitioner were involved in the prosecution which was the subject matter of inquiry and they included the Clerk and the Stenographer of the Deputy Commissioner, and also a person who was a brother of S. Kapur Singh at that time Deputy Commissioner of Hoshiarpur. We make no attempt as indeed it is no part of our task to do so, to give any opinion about the merits of the prosecution. It is a matter which is at present *sub-judice*. The basic fact in this case is that the petitioner never moved any Court for an expeditious disposal of this case, nor was any application submitted by him to have the proceedings against him quashed. Thus it is impossible to come to a conclusion that the cheating case was suddenly resurrected by the police officials in the end of December, 1951, in order to embarrass the petitioner in his election campaign, still less is there justification for us to hold that the case has been kept alive like the sword of Damocles hanging over the 'troublesome' head of Ch. Kartar Singh.

A few days after the arrest of the petitioner, Faqiria one of a strong Harijan supporters was taken into custody on a charge of rape. We have looked at the file of this case in which Faqiria was acquitted and we feel no hesitation in saying that the case against Faqiria was exceedingly doubtful. This may have been S. Puran Singh's way of settling old scores with the petitioner, but we cannot come to a conclusion that it amounted to exercise of undue influence. It has not been shown that anyone was in consequence deprived of his electoral right. We were given details of the election results in Zails Balachaur, Kaulgarh, Kathgarh and Barya, all within the jurisdiction of police station Balachaur. We find that in some of these places the petitioner was leading the respondent and in others the first respondent was leading the poll. The difference in votes cast for the petitioner and the first respondent was not very large and it gives the impression that there was a close fight in Balachaur between the petitioner and the first respondent. This in our opinion shows conclusively that no extensive undue influence could be said to prevail even if it be assumed that S. Puran Singh, Station House Officer, Balachaur was the person responsible for the arrest of the petitioner and his staunch supporter Faqiria. All that we can say is that the arrest of Ch. Kartar Singh at that time was unfortunate, and was by no means a compelling necessity.

There is one other matter which remains to be discussed under this issue, and this relates to the charge levelled against S. Puran Singh, that he asked several

influential persons of the Constituency to vote for the first respondent, and generally assisted in his election. In Schedule B, eleven such persons who were approached by S. Puran Singh have been named. Four of them gave evidence in support of this allegation. Besides these persons other witnesses have also come forward to support the case for the petitioner on this ground. The evidence of many of these witnesses is of a partisan character and some of them belong to the party of the Akali Dal which had definitely aligned itself with the cause of the petitioner. We have no evidence on the record to show that the first respondent ever asked S. Puran Singh to make any propaganda on his behalf. S. Puran Singh has denied altogether his participation in the election campaign. Apart from general complaints against S. Puran Singh preferred by the petitioner before the polling started we have no material to come to a conclusion that the persons who were approached by S. Puran Singh to vote for the first respondent ever raised their voice of protest to the higher authorities against the improper canvassing done by S. Puran Singh. It is highly improbable that S. Puran Singh should have tried to approach the known sympathizers and supporters of the petitioner on behalf of the first respondent. Some of the persons were asked only casually when they went on some business to Balachaur Police Station to vote for Ch. Balu Ram. As many as eight lumbardars have stated on oath that S. Puran Singh tried to enlist their support for the first respondent and a few of them professed to be the supporters of the Congress candidate. Maluk Singh P.W. 45, Lumbardar of Majra Jattan, stated that although he promised S. Puran Singh to vote for the Congress candidate, he voted for the candidate of his choice. To quote his own words "We voted for whichever candidate we wanted to vote without being influenced by the pressure exercised by S. Puran Singh". The evidence of Basant Singh P.W. 52, a lumbardar of Ami is inherently improbable that he told S. Puran Singh that being a Congressman he felt bound to vote for the first respondent. We do not think that he would have so readily come forward to give evidence for the petitioner if he actually supported the Congress cause as he professed to do. Again Partap Singh P.W. 46, Lumbardar of Rakran-Beg, admitted his inability to say whether the pressure exercised by S. Puran Singh was in any way effective. Dalip Singh P.W. 49 has stated that he felt duty bound to vote for the Congress candidate because he had been asked to do so by S. Puran Singh. We may also make a mention of the evidence of Mian Ani Rodh Chand, Naib Sadar Kanungo, P.W. 62, who was posted as a Naib Tahsildar Balachaur in the election days. He has deposed that Ch. Balu Ram accompanied by S. Puran Singh had come to him to seek his support for the election of the first respondent. Now this evidence being of a Government official would amount to a major corrupt practice, if accepted. We, however, feel that this evidence should not be taken into account for various reasons. For one thing no mention about this witness is made in the petition itself. Moreover, Mian Ani Rodh Chand never made any complaint about the improper approach which was made to him by the first respondent and S. Puran Singh. On these broad considerations we do not feel inclined to accept the evidence of Mian Ani Rodh Chand though his testimony cannot be condemned as false.

In truth the evidence of this type can hardly commend itself to any Tribunal. If the voting was done on a communal basis as is the case of the petitioner, there can be no substance in the allegation of the Jat witnesses who have deposed that they were approached by S. Puran Singh to vote for the first respondent and felt bound by duty to act on the behest of this Police official. No one ever raised a complaint about his high-handed conduct. The evidence on behalf of the respondent on the other hand shows that no influence of any kind was exercised by S. Puran Singh. S. Puran Singh as R.W. 21 has categorically denied that he approached the persons who have given evidence in this respect to vote for the first respondent. The probabilities are that S. Puran Singh would not have sought to enlist the support of such persons who were known to espouse the cause of the petitioner. The entire issue must, therefore, be decided against the petitioner.

Issue No. 3.—The subject matter of this issue is covered by paragraph 8 of the petition in which allegations are made both against the first and the third respondents. We shall first deal with those charges which are levelled against the returned candidate. It has been said that Ch. Balu Ram made an appeal to the voters in the name of the Gujjar brotherhood to which he belonged, and extended the threat that if the voting was not done on these lines, the delinquent members would be ostracized. It seems somewhat unusual and strange that this allegation should be made when all along the case of the petitioner has been that voting took place on sectarian lines. In fact his chief grievance against the acceptance of the nomination paper of S. Chotian Singh is that it split up the vote of Jat brotherhood to his detriment. The oral evidence which has been led in support of this matter is wholly insufficient for us to come to a conclusion that Ch. Balu

Ram made an appeal on the basis of sect, and there is not a scintilla of evidence on the record to show that any threat of ex-communication was extended to members of Gujar brotherhood.

The second attack made on the first respondent has been detailed in Schedule G. It was said that Ch. Balu Ram obtained the assistance of S. Puran Singh and Ch. Dev Raj Agricultural Assistant in furtherance of his election prospects. While dealing with the case of S. Puran Singh, we have given an expression of our view that no proof has been adduced to show that Ch. Balu Ram ever obtained or attempted to obtain the assistance of this official for furtherance of his election prospects. Against Ch. Dev Raj of Malcwal, evidence was led that this officer took leave sometime in the end of December and from this circumstance it is sought to be inferred that Ch. Dev Raj utilized this leave for propaganda purposes in favour of the first respondent. Obviously it is quite impossible for the Tribunal to give a finding in favour of the petitioner on the meagre and scanty material which has been placed in support of these allegations. Nor has any attempt been made to impugn the correctness of the return of election expenses made by the returned candidate.

We now come to deal with the poster Ext. P. 6 which appears to have been circulated in the Balachaur constituency during the election campaign. Admittedly this poster was issued on behalf of the third respondent S. Charan Singh who was adopted a candidate by the communist party. One of the headlines of this poster is 'Congress Raj Murda Bad', and the headline in the boldest letters in this poster consists of the words "Captain Charan Singh aur Congress ka mugabla". Both these headlines show that the poster was as much an attack against the Congress candidate as it was against the petitioner against whom the first two headlines were directed to the effect 'Dhol ka pol khul gaya', "Ch. Kartar Singh jawab de". In all there are sixteen heads of allegations made in this poster and the attack is evenly divided between the Congress candidate and the petitioner. Most of the allegations contained in this poster have been demonstrated to be false and the third respondent who was called by us to state his position with regard to the contents of Ex. P. 6 stated that he could not vouch for the veracity of the allegations made therein. S. Charan Singh denied his signatures on this poster and disclaimed any responsibility for its contents. According to Charan Singh the poster was issued on the instructions of Mehnga Singh Secretary, and Gurbachan Singh President of the Communist Election Board whose names are mentioned as signatories of the poster. In our view it has been proved that Charan Singh on whose behalf the poster Ext. P. 6 purports to have been printed was responsible for its publication. Bal Kishan (P.W. 13) proprietor of Amar Printing Press has testified that the poster was printed on the instructions of Charan Singh who paid its publication charges. In view of the undependable character of Charan Singh, we readily accept the evidence of Bal Kishan and hold that the third respondent (Charan Singh) was responsible for publication of the poster.

It is not necessary to repeat the vile and wild allegations which have been made against the petitioner in this poster some of which have already been reproduced in the earlier part of this order. We are satisfied from the evidence which has been led by the petitioner that the assertions made in the poster have no relation to actual facts and in many instances there is no foundation at all for the allegations made. It is impossible to say however whether the petitioner was more adversely affected by this poster or the first respondent. It is true that the first respondent did not repudiate the allegations made against him in the poster in his written statement, but the matter is so obvious that it did not require any pleading of Ch. Balu Ram for the Tribunal to form an opinion that the poster was directed against him. A perusal of the poster is enough to show that the Congress candidate was as much a target of the communist attack as the petitioner. The Congress party was held responsible in this poster for the prevalence of famine conditions, bribery, nepotism, black-market, and all other evils of the administration. Ch. Balu Ram in particular was held responsible for the exploitation of the mill workers. The central theme of the poster was that Captain Charan Singh was the only person who could have brought relief to the electorate and there was not much to choose between the rival candidates Ch. Kartar Singh and Ch. Balu Ram; both of whom were denounced.

It is no doubt a corrupt practice under Section 123(5) of the Representation of People Act by a candidate to publish any statement which is false to his knowledge relating to the personal character or conduct of any candidate, and we hold that the third respondent S. Charan Singh has been guilty of this major corrupt practice. The election of the returned candidate however cannot be set aside on this ground for the plain reason that it was never procured or brought about by the poster Ext. P. 6 for obvious reasons we hold that the result of the election has not been materially affected.

Issue No. 4.—The election is also sought to be avoided on the general ground that the ballot boxes had not been constructed with due care and more especially the lac seals which could have been easily tampered with. No evidence has been led in support of this issue and it is decided against the petitioner.

Issue No. 5.—Our conclusion therefore is that though the corrupt practice of false publication of a poster has been established to have been committed by the third respondent who was summoned before the Tribunal to state whether he wanted to say anything in defence, no case has been made out for the avoidance of the election of the returned candidate. Though there are some unpleasant features of this case to which we have adverted during the course of this order, it would be a clear denial of justice to the first respondent to punish him for the defaults of others. The first respondent has not been shown to be responsible directly or remotely with either the arrest of the petitioner or the publication of the false poster. We would, therefore, dismiss this petition. In the peculiar circumstances of the case, leave the parties to bear their own costs.

Announced.

(Sd.) SHAMSHER BAHADUR, Chairman.

The 12th August 1953.

I agree.

(Sd.) CHHAJU RAM, Member.

The 12th August 1953.

I agree.

(Sd.) M. S. PANNAN, Member.

The 12th August 1953.

[No. 19/182/52-Elec.III/1319.]

By Order,

P R KRISHNAMURTHY, Asstt Secy

